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FILED

MAR 15 2024

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re: Case No.: 24-30047
Chapter 11
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LOMBARD FLATS, LLC
Debtor.

MOTION TO CONVERT CASE
[11 U.S.C. § 1112(b)]

Date: April 12, 2024
Time: 10:00 AM
Via Tele/Videoconference
www.canb.uscourts.gov/calendars

Creditor Legal Recovery LLC, through undersigned counsel, file this motion to convert the Debtor's chapter 11 case to a chapter 7 case pursuant to 11 U.S.C. § 1112(b).

BACKGROUND

MARTIN ENG ("ENG"), as the manager of debtor LOMBARD FLATS LLC, filed this petition on 1/29/2024. Movant **LEGAL RECOVERY, LLC** (LR) is a judgment creditor of both Eng and debtor.

On 7/8/2015, LR obtained a judgment of \$1,507,302.92 against ENG in San Francisco Superior Court Case No. CGC 14-542378.

In San Francisco Superior Court Case No. CGC 15-548357, LR sued ENG, Lombard Flats LLC, and other defendants for conspiracy on fraudulent conveyances. On October 7, 2021, judgment was entered in favor of LR against defendants including Eng and debtor LOMBARD FLATS LLC in the amount of \$2,453,393.60. LR obtained a Writ of Execution on Dec. 2, 2022 and a Sheriff's Sale of the Lombard Street Property was set for November 30, 2023, but because of

motions filed by Eng, the sale was postponed to January 30, 2024 after all of the motions were resolved in LR's favor. At the sale, LR was the successful bidder, and the Sheriff's Deed was recorded on Feb. 5, 2024. Prior to the Sheriff's Sale, US Bank, the holder of a senior lien on the Lombard Street Property, had recorded a Notice of Trustee Sale on Jan. 4, 2024 with sale date set for Feb. 7, 2024. On February 6, 2024, LR filed a petition for reorganization under Chapter 11 of the Bankruptcy Code in this court, Case No.: 24-30074.

BAD FAITH FILINGS BY DEBTOR

The instant petition is the latest bad faith filing spanning many years by co-conspirators Martin Eng, Joanne Eng, and Lombard Flats LLC to hinder LR's enforcement of the judgment.

On 5/11/2019, Ms. Eng filed a petition under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court, Nevada District, Case No. 19-12981. Ms. Eng claimed legal interest in several LLC entities, including Lombard Flats LLC. On 10/23/2023, LR obtained an order for relief from stay to enforce its judgment against Lombard Flats LLC.

On or about 11/24/2014, Martin Eng filed a voluntary petition under Chapter 13 of the Bankruptcy Code, and was assigned Case No. 14-11633. Said case was subsequently dismissed on or about 12/10/2014.

On or about 01/15/2018, Martin Eng filed a voluntary petition under Chapter 13 of the Bankruptcy Code, and was assigned Case No. 18-50088. Said case was subsequently dismissed on or about 03/08/2018.

On or about 05/07/2018, Martin Eng filed a voluntary petition under Chapter 13 of the Bankruptcy Code, and was assigned Case No. 18-51049. Said case was subsequently dismissed on or about 06/11/2018.

Lombard Flats, LLC, through Eng as the manager, filed two previous bankruptcy petitions to

1 hinder LR's enforcement of its judgments: Case no. 19-30526-DM (filed on 05/11/2019,
2 dismissed 06/04/2019) and Case no. 21-50510-DM (filed on 04/15/2021, dismissed 05/14/2021).

3 CASE SHOULD BE CONVERTED TO CHAPTER 7

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5 Section 1112(b)(1) of the Bankruptcy Code provides that the court "shall" convert a case under
6 this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the
7 best interests of creditors and the estate, if the movant establishes cause, unless the court
8 determines that unusual circumstances exist such that conversion or dismissal would not be in
9 the best interests of creditors and the estate (§ 1112(b)(2)). "Cause" is defined in section 1112(b)
10 (4) to include, *inter alia*, substantial or continuing loss to or diminution of the estate and the
11 absence of a reasonable likelihood of rehabilitation, or gross mismanagement of the estate.

12 Generally, cause is based on a totality of circumstances. *Leavitt v. Soto (In re Leavitt)*, 171 F.3d
13 1219, 1224 (9th Cir. 1999).

14 Creditor LR is the owner of 100% of the economic interest in Lombard Flats LLC. Eng is
15 merely the manager with no interest in debtor's estate. The Judgment provides that LR may
16 seize, execute on or foreclose LOMBARD FLATS LLC's properties. The Judgment also enjoins
17 Eng from "committing or permitting any waste on the property; selling, transferring, disposing,
18 encumbering, concealing, or otherwise transferring the property without a prior court order; and
19 doing any act that will impair the preservation of the property or Plaintiff's interest in the
20 property."

21 Here, there is ample evidence of bad faith, substantial or continuing loss to or diminution of the
22 estate, the absence of a reasonable likelihood of rehabilitation, and gross mismanagement of the
23 estate. Eng filed this instant petition, one in a long series of bad faith filings, to hinder LR's
24 enforcement of its judgment. The long history of fraudulent conveyances by Eng shows that he
25 is intent on converting the properties of Lombard Flats LLC to himself. There is no reasonable
26 likelihood of rehabilitation. If Eng is allowed to maintain control over the debtor's estate, he will
27 continue to mismanage the estate. Since LR is the owner of all economic interest in the debtor's
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1 estate, and to avoid further dissipation of the estate by Eng's gross mismanagement, it is in the
2 best interests of creditors and the estate to convert the case to Chapter 7 and liquidate the estate.
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4 WHEREFORE, creditor prays for an order as follows:
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- 6 1. For an Order converting the case to Chapter 7; and
- 7 2. For such other relief as the Court deems proper.

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9 Respectfully Submitted,

10 March 14, 2024

11 /s/ Leeds Disston 

12 Attorney for Creditor Legal Recovery LLC
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